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***THE HON'BLE MS. JUSTICE G.ROHINI**

+WRIT PETITION NO.14074 OF 2005

% 12/09/2005

Yedida Sri Ram Kumar, S/o. Satyanarayana,

aged 24 years, D.No.3-17B-3/7, Godari Gunta,

Kakinada, East Godavari District. … Petitioner

Vs.

$ 1. Govt. of A.P., rep. by its Secretary,

Department of Prohibition & Excise,

Secretariat, Hyderabad, and 3 others. … Respondents

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! Counsel for the petitioners : Sri N.V. Anantha Krishna

^ Counsel for the respondents 1 to 3: Sri O. Manoharreddy

Counsel for the respondent No.4 : G.P. for Proh. & Excise

Cases Referred :

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.14074 OF 2005

Dated: 12th September, 2005.

Between:

Yedida Sri Ram Kumar, S/o. Satyanarayana,

aged 24 years, D.No.3-17B-3/7, Godari Gunta,

Kakinada, East Godavari District. … Petitioner

And

1. Govt. of A.P., rep. by its Secretary,

Department of Prohibition & Excise,

Secretariat, Hyderabad, and 3 others. … Respondents

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.14074 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the action of the 3rd respondent in granting permission to the 4th respondent to establish a shop in Ward No.4 of Kakinada Municipal Corporation for sale of Indian Liquor and Foreign Liquor without conducting any public auction as prescribed under the law as arbitrary and illegal.

The facts, which are not in dispute, are as under :

In pursuance of Auction Notification dated 26-5-2005 issued by the District Collector, East Godavari inviting tenders from the intending tenderers for grant of

lease of right to sell Indian Liquor and Foreign Liquor by shop for a period of one year i.e, from 1-7-2005 to 30-6-2006 in the Municipal Corporation of Kakinada, the writ petitioner has participated and he was declared as the successful bidder in respect of Shop-C in Ward No.5.

It is not in dispute that so far as Ward No.4 is concerned, no shop was notified and consequently no auction was conducted for grant of lease in the said ward.

The 4th respondent was the successful bidder in respect of Shop No.A of Ward No.6. In pursuance thereof, the third respondent has permitted the 4th respondent to establish a shop in the premises bearing No.2-43-28, B.V.S. Patrudu Street of Kakinada assuming that the said premises is situated in Ward No.6. Admittedly, a shop was existing in the said premises during the lease year 2004-05 which was valid upto 30-06-2005. However, the writ petitioner contends that consequent to re-division of Kakinada Municipal Corporation into 50 wards, the delimitation of the wards was notified on 1-6-2005, according to which the premises bearing No.2-43-28, B.V.S.Patrudu Street falls within Ward No.4, but not in Ward No.6. Thus, according to the writ petitioner, the action of the third respondent in permitting the fourth respondent to establish a shop in the premises bearing Door No.2-43-28 is arbitrary, illegal and unsustainable. Hence, this writ petition.

On the other hand, the case of the 4th respondent is that the premises bearing No.2-43-28 of B.V.S. Patrudu Street wherein he has located the shop and in respect of which he has also been granted a licence is situated in Ward No.6 of Kakinada Municipal Corporation, but not in Ward No.4 as contended by the writ petitioner.

The said version has been reiterated by the respondents 1 to 3 stating that the Kakinada Municipal Corporation has issued a certificate to the effect that the premises in question wherein the 4th respondent has located the shop is situated in 6th Ward of Kakinada Municipal Corporation.

I have heard the learned Counsel for both the parties and perused the material on record.

The material placed before this Court by the writ petitioner shows that consequent to upgradation of Kakinada Municipality into Kakinada Municipal Corporation, the municipal wards were re-divided and a Preliminary Notification dated 8-5-2005 was issued under Rule-8 of A.P. Municipal Corporation (Delimitation of Wards) Rules, 1996 calling for objections and suggestions from the residents of city regarding delimitation of wards into 50 single member wards. In the said Preliminary Notification, the premises bearing No.2-43-28 of B.V.S. Patrudu Street was shown in Ward No.4. Having considered the suggestions / objections received, the General Body of the Municipal Corporation, Kakinada vide Resolution dated 13-5-2005 approved the proposal for delimitation of wards. Subsequently, a Final Notification dated 1-6-2005 was also published in local dailies which clearly shows that the premises in question falls in Ward No.4. Thus, undoubtedly the premises bearing No.2-43-28 which was hitherto in Ward No.6 has been included in Ward No.4 with effect from 1-6-2005.

The fact that the Corporation has been re-divided into 50 wards and as per the Final Notification dated 1-6-2005 the premises in question falls in Ward No.4 has not been disputed by the respondents, but their plea is that as on the date of the Auction Notification issued by the District Collector, East Godavari dated 26-5-2005 the premises in question was located only in Ward No.6 wherein a retail shop was already existing during the previous years. The respondents have also placed reliance upon a certificate granted by the Town Planning Officer, Municipal Corporation, Kakinada stating that the premises in question is situated in 6th Ward of Kakinada Municipal Corporation. However, admittedly the said certificate was issued on 30-05-2005, whereas the delimitation of the wards in Kakinada Municipal Corporation as published in the Notification dated 1-6-2005 has come into force w.e.f. 1-6-2005. It is also relevant to note that the auction was actually conducted on 3-6-2005. In the circumstances, I am of the view that the respondents are bound by the delimitation of wards as published in the Notification dated 1-6-2005 and it is not open to them to rely upon the wards existed as on the date of the Auction

Notification dated 26-5-2005. As a matter of fact, under the said Notification the tenders were invited only with reference to number of the shops fixed in each ward of the Municipal Corporation and there was nothing to indicate the areas of each ward much less with regard to any particular premises.

It is relevant to note that in exercise of the powers conferred by Section 72 read with Section 17, 28 and 29 of the A.P. Excise Act, 1968 the Governor of A.P. made the Rules called The A.P. Excise (Lease of right of selling by shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules). As per the said Rules, the lease of right to sell Indian Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders from the public. Before issuing such Auction Notice, the Commissioner of Prohibition & Excise has to fix the number of shops to be established in an area/locality and the same has to be mentioned in the Auction Notice. Thereafter, it is for the successful tenderer to select the suitable premises satisfying the conditions specified under Rule 27 of the Rules within the area/locality as notified in the District Gazette. Such premises selected by the successful tenderer requires to be approved by the Prohibition & Excise Superintendent, after which a licence will be issued in the prescribed Form-A4.

In the light of the above said legal position, the mere fact that by the date of the Auction Notification, the premises in question was located in Ward No.6 is immaterial and has no relevancy at all. Moreover, in view of the fact that the auction was conducted on 3-6-2005, by which date the delimitation of the wards of the Kakinada Municipal Corporation has already come into force, the 4th respondent ought not to have selected the premises bearing No.2-43-28 for locating his shop, which admittedly by that date falls within Ward No.4. The respondent No.3 evidently committed an error in approving the said premises selected by the 4th respondent. Apparently, the action of the 3rd respondent in approving the said premises and consequently granting the licence in favour of the 4th respondent was without application of mind to the delimitation of the wards under the Notification dated 1-6-2005. Such action is clearly in contravention of Rules 4 and 5 of the Rules, under which the shops are required to be established area/locality wise as fixed by the Commissioner of Prohibition & Excise. Hence, the 4th respondent who is a

successful bidder in respect of ward No.6 cannot be permitted to locate his shop in Ward No.4 of the Kakinada Municipal Corporation.

For the aforesaid reasons, the Writ Petition is allowed declaring that the action of the 3rd respondent in granting licence to the 4th respondent to establish the shop in the premises bearing No.2-43-28 of B.V.S. Patrudu Steet in Ward No.4 of Kakinada Municipal Corporation is illegal and impermissible.

However, it is made clear that it is always open to the respondent No.4 to select a suitable premises in Ward No.6 strictly adhering to the statutory requirements, in which event the respondents 1 to 3 on being satisfied as to its suitability shall grant a licence.

With the above observation, the Writ Petition is allowed. No costs.

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12th September, 2005.

Note:- LR copy to be marked.

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